

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 610 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
2 to 5 4

-----

KANTI RAVCHAND SHAH

Versus

STATE OF GUJARAT

-----

Appearance:

Mr. R.J. Goswami for MR SV RAJU for Petitioners  
Mr. A.J. Desai APP for Respondent No. 1

-----

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 04/02/98

ORAL JUDGEMENT

1. Heard Mr. R.J. Goswami for S.V. Raju, learned Advocate for the petitioners. Leave to amend as prayed, is granted.

2. Rule. Mr. A.J. Desai, learned APP waives service of Rule on behalf of the respondents. With the consent of the learned Advocates appearing for the parties, the matter is finally heard today.

3. The petitioner has challenged the legality and validity of the order passed by the learned Metropolitan Magistrate, Court No.4, Ahmedabad, produced at Annexure-A with the application dated 31.3.1995 claiming discharge for the offences charged in Criminal Case No. 16/93 and has also challenged the order dated 15.11.1997 produced at Annexure-B passed by said Court below Application dated 29.1.96 again claiming the same relief to discharge from the offences made punishable under Section 420, 465 and 471 of the I.P.C. read with Section 114.

4. It has been submitted on behalf of the petitioners that one Binaben B. Shah has filed a private complaint in the Court of Metropolitan Magistrate, Court No.4, Ahmedabad, against the present petitioners No. 1 to 4 on the allegations of offences made punishable under Section 420, 465, 471 of the I.P.C. read with Section 114. That said private complaint was sent for investigation by learned Metropolitan Magistrate under Section 156(3) of Cr.P.C. and thereby it was given M.Case No. 8/93. That thereafter, the police have investigated the allegations of the said complaint and had filed the charge sheet against present petitioners No. 1 to 4 and as such the case has been registered as Criminal Case No. 2834 of 1994. It is the further case of the petitioners that on 31st March, 1995, the petitioners No. 1 to 4 have moved an Application Exhibit 3 in the above stated Criminal Case through their

Advocate contending that material collected and produced by Investigating Officer along with the charge sheet is insufficient to constitute any offence as alleged against the present petitioners as accused of the said case and thereby petitioners should be discharged from the offences charged. That such application at Exhibit 3 was heard in the absence of learned Advocate of the present Petitioners No. 1 to 3 who were the accused of the said Criminal Case. That impugned order dated 31.3.1995 is passed by the learned Metropolitan Magistrate, Court No.4, rejecting the application on the ground that such application could not be decided without recording the evidence.

5. It is the contention of the petitioners that on 31.3.1995 when the petitioners had moved the said application, the application was fixed for hearing on 7.4.1995. That thereafter on 31.3.1995, in the evening, the learned Advocate for the petitioners came to know

about the said order and thereby he made a request to the learned Metropolitan Magistrate to grant him the hearing. According to the petitioners, at that time, learned Metropolitan Magistrate advised the learned Advocate to file fresh application, which he would decide. It is the further case of the petitioners that thereafter said learned Metropolitan Magistrate was transferred and as such on 29.1.1996 the petitioners moved fresh application

as per Annexure-B. It was also fixed for hearing. After hearing the matter, the learned Magistrate passed order dated 15.11.1997 rejecting the application. The said order as produced at Annexure-B to the petition is challenged.

6. Shri Goswami, learned Advocate appearing for the petitioners has taken me through the impugned order and has contended that according to the learned Magistrate the earlier application as per Annexure-A was rejected on the ground that application cannot be allowed without recording the evidence. Fresh application is not maintainable on the same ground and thereby he has rejected the application vide the impugned order. That such a reasoning is contrary to the logic, law and settled position. That as a matter of fact, submission was made to the learned Magistrate that on account of impugned order dated 31.3.1995 passed by the learned Magistrate after fixing the application as per Annexure-A for hearing on 7.4.1995 in the absence of the learned advocate for the accused, the second application as per Annexure-B was necessitated on account of advise given by the Magistrate, who was subsequently transferred. It is also submitted on behalf of the petitioners by Shri Goswami that learned Magistrate has committed an error of law by not considering the application as a fresh application and deciding the same on the basis of material produced on record.

7. Shri A.J. Desai, learned APP could not dispute the proposition that end of justice could be met if direction is given to the learned Metropolitan Magistrate to decide the application afresh if moved by the present petitioners on the same subject matter.

8. In the facts and circumstances of the case, the impugned order passed below Application Exhibit-3 dated

31.3.1995 as per Annexure-A and order dated 15.11.1997 passed below Application dated 29.1.1996 as per Annexure-B are quashed and set aside and following directions are given:

(A) The petitioners are directed to move fresh application for the relief which they have prayed vide earlier applications as per Annexures A & B within three weeks from the date of receipt of the certified copy of this order;

(B) The Metropolitan Magistrate, Court No.4, Ahmedabad, is directed to decide the fresh application moved by the present petitioners in accordance with law within a period of two weeks from the date of application. .

9. In the result, this Criminal Revision Application succeeds. Rule is made absolute to the aforesaid extent only. No order as to costs.

-----

p.n.nair